IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 23RD NOVEMBER 2007 / 2ND AGRAHAYANA 1929

OP.No. 26536 of 2001(H)

PETITIONER:

A.M.SADEEQUE, XL/4456, ST. ALBERTS LANE,
ERNAKULAM, KOCHI – 31, MANAGING DIRECTOR OF STAR MERCANTILE ENTERPRISES PRIVATE LIMITED, BASIN ROAD, KOCHI – 31.

BY ADV. SRI.N.MURALEEDHARAN NAIR
SRI.V.K.SHAMUSUDHEEN

RESPONDENTS:
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1. ASST. COMMISSIONER (ASSMT) II, SPL. CIRCLE, COMMERCIAL TAXES, ERNAKULAM.

2. DY.TAHSILDAR (RR), TALUK OFFICE, ERNAKULAM.

3. STATE OF KERALA, REP. BY ITS CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.

BY ADV. SHRI.C.K.GOVINDAN, GOVERNMENT PLEADER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 23/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.NO. 26536/2001

ORDER ON CMP NO.43036/2001 IN O.P.NO. 26536/2001 &
ORDER ON CMP NO.63498/2001 IN CMP NO.43036/2001 IN O.P.NO. 26536/2001

DISMISSED.

23/11/2007 SD/- (C.N.RAMACHANDRAN NAIR, JUDGE)

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE ASSESSMENT ORDER PASSED BY THE 1ST RESPONDENT FOR the YEAR 1996-97 DATED 22/03/2001.

P2 : COPY OF THE DEMAND NOTICE ISSUED by the 2ND RESPONDENT UNDER SECTION 7 OF THE RR ACT DATED 10/07/2001.

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

O.P. No. 26536 of 2001

Dated, this the 23rd day of November, 2007

J U D G M E N T

Petitioner is challenging recovery proceedings initiated against the petitioner for recovery of arrears of sales tax due for the year 1996-97 from a private limited company, of which petitioner is the Managing Director. Petitioner's case is that personal recovery cannot be made against the petitioner. However, petitioner has not furnished details of other directors or pattern of shareholding of the company, on the basis of which respondents can proceed for recovery against directors if they are the sole beneficiaries of the company. By virtue of various decisions of the Supreme Court in **Commissioner of Income Tax Vs. Sri.Meenakshi Mills Ltd. & Others,** reported in 63 ITR 609, **McDowell And Co. Limited Vs. Commercial Tax Officer,** reported in 154 ITR 148, etc. liability due from private company can be recovered from the persons who were the beneficiaries of the company. Learned Government Pleader submitted that petitioner approached the Government and obtained instalment facility but did not pay the tax. I do not find any bonafides in the challenge against recovery, more so when petitioner has not furnished details of other beneficiaries of the

company. This original petition is, therefore, devoid of any merit and is dismissed leaving freedom to the respondents to proceed for recovery against the petitioner, if petitioner does not surrender sufficient assets of the company for recovery.

2. Even though petitioner is challenging constitutional validity, in view of the facts stated above, I do not find this is a fit case to consider constitutional validity of Section 26C of the KGST Act because even without reference to Section 26C recovery may be made against the petitioner as he appears to be the sole beneficiary of the company. Therefore, I decline to consider this question.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

jg